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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/579,240	07/10/2006	Thomas Richard Vitton	GP1A 0101 PUSA	7821
22045 7590 05/20/2011 BROOKS KUSHMAN P.C. 1000 TOWN CENTER TWENTY-SECOND FLOOR SOUTHFIELD, MI 48075				
EXAMINER				
PANI, JOHN				
ART UNIT		PAPER NUMBER		
3736				
MAIL DATE		DELIVERY MODE		
05/20/2011		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/579,240

Applicant(s)

RICHARD VITTON, THOMAS

Examiner

JOHN PANI

Art Unit

3736

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 March 2011.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 9, 11-20, 23, 24 and 29-34 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1, 9, 11-20, 23, 24 and 29-34 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-946)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 3/7/11 has been entered.

Claim Objections

2. The numbering of claims is not in accordance with 37 CFR 1.126 which requires the original numbering of the claims to be preserved throughout the prosecution. When claims are canceled, the remaining claims must not be renumbered. When new claims are presented, they must be numbered consecutively beginning with the number next following the highest numbered claims previously presented (whether entered or not).

Misnumbered claim 32 (the second instance of claim 32) been renumbered 33.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 30-33 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

5. In reference to Claim 30

6. Line 16 refers to "the floor stand" which lacks antecedent basis in the claims. Line 17 refers to "the end of the first rotary movement" which lacks antecedent basis in the claims. Line 21 refers to "the end of the second rotary movement" which lacks antecedent basis in the claims.

7. In reference to Claims 31 and 32

8. Claim 31 requires "wherein the stop plate is blocked suddenly by the damper and the ring is trapped by a tooth of the toothed plate during a stop of rotation of the primary arc to generate strong deceleration". First, "strong" is a relative word that the original disclosure does not define in a manner that one of ordinary skill in the art would understand the scope of the claims. Second, the claim is directed to "[a] medical examination chair", but the cited limitation appears to be a method step. It is thus unclear what the scope of the claim is.

9. In reference to Claim 33

10. Claim 33 requires "wherein the plate is blocked suddenly by the damper, and the plate is trapped by the hook during a sudden stop of the second arc to generate strong deceleration". First, "strong" is a relative word that the original disclosure does not define in a manner that one of ordinary skill in the art would understand the scope of the

claims. Second, the claim is directed to "[a] medical examination chair", but the cited limitation appears to be a method step. It is thus unclear what the scope of the claim is.

Claim Rejections - 35 USC § 102

11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

12. Claims 1, 9, 11, 12, 18, and 30 are rejected under 35 U.S.C. 102(b) as being anticipated by US Pat. No. 4,402,500 to Coles ("Coles").

13. Coles discloses:

14. In reference to Claim 1

15. A medical examination chair (10) for seating and moving a patient in three substantially perpendicular planes over a large amplitude (note that the term "medical examination" has been interpreted as a statement of intended use, and that the device of Coles could be used for medical examination) said medical examination chair comprising: a floor stand (11, 14); a rear stationary column (12; note that 12 could be interpreted as rear if one were to consider 13 the front of the device, and it is the only support column in this position) on the floor stand; a primary arc (angular extent of 15 extending up and down from 20 but stopping prior to the portions of 15 contacting the attachment point of 23 to 15) connected to said stationary column, the primary arc having a first end (end near 31) and a second end (end near 32) with an arcuate

member (portion of 15 between 31 and 32) extending between the ends; a horizontal shaft (16) extending along a first direction between said primary arc and said single rear stationary column, said horizontal shaft constitutes a first axis of rotation of the primary arc about said single rear stationary column; a second axis of rotation (axis through 31, e.g.) substantially perpendicular to the first axis of rotation and passing through first (bottom section of 15 connecting 15 to 23) and second ends (top section of 15 connecting 15 to 23) of said primary arc; a secondary arc (one of 25, 26, 27, etc.) that includes a seat (33) thereon said secondary arc having a third end (end shown in Fig. 3) and a fourth end (end shown in Fig. 8) with an arcuate member (portion of 25, 26, 27, etc. between its ends) extending between the ends, said secondary arc is arranged inside said primary arc (Fig. 1), said secondary arc is secured via the third end and the fourth end to said first end and said second end (see Figs 3 and 8), respectively via an upper shaft (31) and a bottom shaft (32), said primary arc and secondary arc being configured for performing non-motorized rotary movement about said first axis of rotation and said second axis of rotation respectively (see col. 3 lines 1-15); and a brake (48 and 45; 40 and 38) that suddenly stops said non-motorized rotary movement (col. 4 lines 26-55), said brake including at least a first mechanical abutment (38 and 37) that suddenly stops said primary arc relative to said single rear stationary column and a second mechanical abutment (48 and 45) for suddenly stopping said secondary arc relative to said primary arc.

16. In reference to Claim 9

17. Coles discloses the medical examination chair of claim 1 (see above) and Coles discloses wherein the first mechanical abutment (38, 40) is on one lateral side of said stationary column and provided with a ring (38) and a damper (40 could act as a shock absorber), said ring cooperating with a tooth (37) of catch means arranged on the primary arc (see Fig. 7).

18. In reference to Claim 11

19. Coles discloses the medical examination chair of claim 1 (see above) and Coles discloses wherein said second mechanical abutment has at least one hook (48) and at least one damper (see pads on 48) arranged on the first end of the primary arc, said hook co-operating with stop means (45) disposed on the third end of the secondary arc.

20. In reference to Claim 12

21. Coles discloses the medical examination chair of claim 11 (see above) and Coles discloses wherein said stop means is retractable (via 46).

22. In reference to Claim 18

23. Coles discloses the medical examination chair of claim 11 (see above) and Coles discloses including patient restraining means (see Fig. 1, includes a seat belt).

24. In reference to Claim 30

25. A medical examination chair (10) for seating and moving a patient (note that the term "medical examination" has been interpreted as a statement of intended use, and that the device of Coles could be used for medical examination), the medical examination chair comprising: a stationary column (12); a horizontal shaft (16) supported by the stationary column, the horizontal shaft having a first axis of rotation; a

primary arcuate member (15) connected to the horizontal shaft and having a first end (near 31) and a second end (near 32), wherein the primary arcuate member is configured for performing a first rotary movement about the first axis of rotation; a secondary arcuate member (one of 25, 26, 27, etc.) supported for rotation by the primary arcuate member about a second axis of rotation through the first end and the second end of the primary arcuate member, the secondary arcuate member arranged inside the primary arcuate member, the second axis of rotation substantially perpendicular to the first axis of rotation, wherein the secondary arcuate member is configured for performing a second rotary movement about the second axis of rotation (see Fig. 1); a seat (33) supported by the secondary arcuate member; a first mechanical abutment (38 and 37) supported by the floor stand to abruptly stop the primary arcuate member relative to the stationary column at the end of the first rotary movement of the primary arcuate member; and a second mechanical abutment (48 and 45) supported by the primary arcuate member to abruptly stop the secondary arcuate member relative to the primary arcuate member at the end of the second rotary movement of the secondary arcuate member.

Claim Rejections - 35 USC § 103

26. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

27. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Coles in view of US Pat. No. 3,774,963 to Lowe ("Lowe").

28. Coles discloses the medical examination chair of claim 1 (see above) but does not explicitly teach that the seat position can be adjusted along the second axis of rotation. Lowe teaches a vehicle seat in which the seat height can be adjusted to allow the seat to conform to various users (col. 3-4). It would have been obvious to one having ordinary skill in the art at the time of the invention to have modified the device of Coles by making the seat height adjustable so the device could conform to multiple users as taught by Lowe.

29. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Coles as applied to claim 1 above, and further in view of US Pat. No. 3,343,875 to Ferrara ("Ferrara").

30. Coles discloses the medical examination chair of claim 1 (see above) but does not explicitly teach that the seat back is adjustable in translation along said second axis of rotation. Ferrara teaches a vehicle seat in which the seat back can be adjusted in a vertical direction to allow it to conform to multiple users (col. 2-3). It would have been obvious to one having ordinary skill in the art at the time of the invention to have modified the device of Coles by making the seat back height adjustable so the device could be used by people of various sizes as taught by Ferrara.

31. Claims 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Coles in view of Chinomi and Alton as applied to claim 1 above, and further in view of US Pat. No. 6,264,278 to Weimer et al. ("Weimer").

32. Coles in discloses the medical examination chair of claim 1 (see above) but does not explicitly teach an adjustable foot rest. Weimer teaches a vehicle seat with a foot rest that is adjustable in height and angle (col. 3-4) so the device can be comfortably used by people of varying sizes. The foot rest increases circulation to the feet compared to letting the feet dangle. It would have been obvious to one having ordinary skill in the art at the time of the invention to have modified the device of Coles by including an footrest adjustable in height and angle so the user would have increased circulation compared with unsupported feet, and so the device could be conformed to various sized users as taught by Weimer.

33. Claims 17 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Coles as applied to claim 1 above, and further in view of US Pat. No. 5,052,754 to Chinomi and US Pat. No. 5,792,031 to Alton ("Alton").

34. Coles teaches the device of claim 1 (see above) and a seat (33) thereon having patient restraining means to restrain arms (see handles attached to 24 and 27) and lower limbs (strap on seat could be used to restrain at least thighs) of the person in the seat, but is silent regarding a headrest that is tiltable and adjustable in translation along said first and second axes of rotation, or restraints to restrain shoulders and head of the person in the seat.

35. Chinomi teaches a vehicle head rest in which the device is tiltable and adjustable in translation vertically and horizontally (see Figs. 1-9 and col. 2-5) for increased comfort. It would have been obvious to one having ordinary skill in the art at the time of the invention to have modified the device of Coles by including a headrest that was tiltable and adjustable in translation vertically and horizontally in order to increase user comfort as taught by Chinomi. The headrest could be used to restrain the head.

36. Alton discloses a device similar to Coles and including shoulder straps (20) to restrain the user (see col. 5 lines 25-45). It would have been obvious to one having ordinary skill in the art at the time of the invention to have modified Coles by including shoulder straps to secure the patient in his seat as disclosed by Alton.

37. Claims 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Coles as applied to claim 1 above, and further in view of US Pat. No. 5,046,721 to Altare ("Altare").

38. In reference to Claim 19

39. Coles discloses the medical examination chair of claim 1 (see above) but does not explicitly disclose a first lock that locks the primary arc relative to the stationary column. Altare discloses a gyroscope which includes a first lock (85) which locks the primary arc (13) relative to a stationary column (30) so that the arcs do not move during loading, etc. (see col. 4 lines 38-54). It would have been obvious to one having ordinary skill in the art at the time of the invention to have modified Coles by including a lock to

lock the primary arc to the column in order to prevent unwanted relative motion during loading, etc. as disclosed by Altare.

40. In reference to Claim 20

41. Coles discloses the medical examination chair of claim 1 (see above) but does not explicitly disclose a second lock that locks the secondary arc in a plurality of positions relative to the primary arc. Altare discloses a gyroscope which includes a second lock (200) that locks the secondary arc (180) in a plurality of positions (note 210 and 212) relative to the primary arc to assist in a user getting in and out of the device (see col. 6 lines 18-35). It would have been obvious to one having ordinary skill in the art at the time of the invention to have modified Coles by including a similar locking mechanism in order to increase safety during a user getting in and out of the device as taught by Coles.

42. Claims 23 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Pat. No. 6,800,062 to Epley ("Epley") in view of Coles as applied to claim 1 above.

43. Epley teaches a medical examination chair (see Figs. 2-3 and at least col. 10 lines 9-30) which is rotatable about a horizontal axis and vertical axis. Epley does not explicitly detail the structure of the chair portion but notes that other designs which can allow rotation of the user about axes could be used. Coles discloses the medical examination chair of claim 1 (see above). It would have been obvious to one having ordinary skill in the art at the time of the invention to have modified the medical

examination chair of Epley by making it with the arcs and columns in a configuration such as that taught by Coles, as this simple substitution of one device design for another would predictably result in orienting a user about multiple axes as taught by both Epley and Coles. Epley teaches a control and management member (20).

44. Claim 34 is rejected under 35 U.S.C. 103(a) as being unpatentable over Coles as applied to claim 30 above, and further in view of US Pat. No. 1,342,871 to Ruggles ("Ruggles").

45. Coles discloses the chair of claim 30 (see above) but does not disclose a position adjustment system connected to the stationary column and the primary arcuate member to vertically adjust the primary arcuate member with respect to the stationary column. Ruggles teaches an orientator in which the primary arcuate member (23) and the stationary column (11) are attached such that the height of the primary arcuate member can be adjusted (see col. 3 lines 25-35) so that the user can enjoy additional freedom of movement. It would have been obvious to one having ordinary skill in the art at the time of the invention to have modified the device of Coles by including structure to move ring 15 vertically with respect to the column so that the user could enjoy additional freedom of movement as suggested by Ruggles.

Response to Arguments

46. Applicant's arguments, see pg. 7 of Remarks, filed 3/7/11, with respect to the rejection of claims 1, 9, 11-20, 23, 24, 27, and 28 under 35 U.S.C. 112, first paragraph

have been fully considered and are persuasive. The rejection of 12/6/10 has been withdrawn.

47. Applicant's remaining arguments filed 3/7/11 have been fully considered but they are not persuasive. Regarding claim 1, Applicant's arguments with respect to Chinomi and Alton are moot in view on the new grounds of rejection. In response to Applicant's arguments that "the braking mechanism of Coles is not an abutment and does not stop the device abruptly as claimed, therefore, Coles teaches away from the limitations in claim 1", the Examiner respectfully disagrees. Each of the structures referred to as an "abutment" above includes a point of contact between two objects or parts, which is the broadest reasonable interpretation of the term. The disclosure does not specially define "abutment" or use it in a manner inconsistent with this interpretation. Additionally, the Applicant provides no definition of "abruptly" which would distinguish from the various brakes that are used to stop the device of Coles. Applicant's arguments that "the braking mechanism of Coles is operated by the user . . . which teaches away from the device as a piece of medical equipment where a medical professional would have control" is not germane to the rejection at hand, as it is an anticipation rejection, and regardless, the claim is an apparatus claim, not a method claim.

48. The declaration under 37 CFR 1.132 filed 3/7/2011 is insufficient to overcome the rejection of claims 1, 9, 11-20, 23 and 24 based upon Coles, Chinomi, and Alton as set forth in the last Office action because: The claims have been amended such that Coles now anticipates claims 1, 9, 11, 12, and 18. Therefore secondary considerations are not germane to these claims. Additionally, regarding claims which are found obvious it

refer(s) only to the system described in the above referenced application and not to the individual claims of the application. Thus, there is no showing that the objective evidence of nonobviousness is commensurate in scope with the claims. See MPEP § 716.

49. It include(s) statements which amount to an affirmation that the claimed subject matter functions as it was intended to function. This is not relevant to the issue of nonobviousness of the claimed subject matter and provides no objective evidence thereof. See MPEP § 716.

50. In view of the foregoing, when all of the evidence is considered, the totality of the rebuttal evidence of nonobviousness fails to outweigh the evidence of obviousness.

51. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., "C' arm design") are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

52. In response to Applicant's arguments that Coles does not teach "said first mechanical abutment is on one lateral side of said stationary column and is provided with a ring and a damper (B1'), said ring co-operating with a tooth of catch means arranged on the primary arc", the Examiner respectfully disagrees and notes that each of these structures has been identified in the rejection above. Piece 37 and the end of shaft 16, for example, form a "catch means". The claim does not currently describe this structure in a manner distinguishing the claims from the Coles reference.

Allowable Subject Matter

53. Claims 31-33 would likely be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Conclusion

54. The Applicant's representative is invited to contact the Examiner for an interview in order to attempt to properly claim possible patentable subject matter.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JOHN PANI whose telephone number is (571)270-1996. The examiner can normally be reached on Monday-Friday 10:00 am - 6:30 pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on 571-272-4726. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/JP/ 5/19/11

/Max Hindenburg/
Supervisory Patent Examiner, Art Unit 3736

